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MOTION FILED APR 19 1946

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 275.

EDITH NYCUM, *Petitioner*

vs.

CITY OF ALTOONA, PENNSYLVANIA, *Respondent*

**MOTION FOR LEAVE TO FILE SECOND
PETITION FOR REHEARING AND PETITION
FOR SECOND REHEARING.**

EDITH NYCUM, *Petitioner*,
1210 13th Avenue,
Altoona, Pennsylvania.

On petition for writ of certiorari
to the SUPREME COURT of

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MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING

Come, the petitioner, and respectfully move this Court for leave to file a second Petition for Rehearing, within the time allowed, which motion is based upon the following grounds:

1. That petitioner is a citizen of the United States, and a resident of the State of Pennsylvania. The State of Pennsylvania cannot abridge her federal and constitutional rights of due process and equal protection of the law, in their effort to deprive her of her Constitutional Right of Freedom of Press.

2. The question before this court, is, can the Pennsylvania Courts deprive petitioner of her Constitutional Right of Freedom of Press, said Pennsylvania authorities had so much personal interest as to cause them to

be over zealous in their effort to deprive petitioner of Freedom of the Press; that they created many federal questions, which they also deprived her of. Your petitioner did not know the extent to which her attorneys had entered into this gross fraud to deprive her of her Constitutional Rights, until very recently, as petitioner will show your court, by the Supplemental Decree and other annexed papers.

In *Lyons v. State of Oklahoma*, 322 U. S. 596, p. 1213. This court held: "The Fourteenth Amendment is a protection against criminal trials in state courts conducted in such a manner as amounts to a disregard of "that fundamental fairness essential to the very concept of justice", and in a way that "necessarily prevent(s) a fair trial".

In *Hill v. Texas*, 316 U. S. 400, p. 1159. This court held: "A State may not impose upon one charged with crime a discrimination in its trial procedure which the constitution and an act of Congress passed pursuant thereto alike forbid. The Supreme Court is not at liberty to grant or withhold the benefits of equal protection of the laws merely as court may deem the defendant innocent or guilty. "Equal protection of the laws" is not an abstract right, but is a command which the State must respect".

3. Petitioners arrest was ordered by one, Mayor Chas. Rhodes, R. p. 13, 32, Mayor of the City of Altoona, Pennsylvania; for not getting a permit R. p. 11; to hang cloth signs, hung by Mrs. Phillips, on a house Mrs. Phillips has been in control of since 1928, R. p. 42-43. These signs tell of the torture murder of petitioner's niece, and how the Pennsylvania authorities refused to do the ministerial duty of their office, to hold a Coroners inquest, and their effort to conceal the murder to protect the man who murdered said niece R. p. 53-54. Mayor Rhodes name appears on these signs R. p. 53. It is conceded these signs, and articles that run in a local paper, telling of the refusal to prosecute the murderer and the persecution of said niece's family, defeated this Pennsylvania Mayor for re-election.

In *West Virginia State Board of Education v. Barnett*, 319 U. S. 624, p. 1185. This court held: "The very purpose of a Bill of Rights was to withdraw

certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

4. The prosecuting attorney, City Solicitor Samuel Jubelirers name appears on said signs as taking two hundred and fifty dollars from petitioner; one hundred dollars was a retainer, R. p. 54, he never served her and he was prosecuting her. Said money was to prosecute a City policeman. He being City Solicitor, he could not prosecute a City employee.

In *Buchalter v. People of State of New York*, 319 U. S. 427, p. 1129. This court held: "The 'due process of law' clause of Fourteenth Amendment requires that action by State through any of its agencies must be consistent with fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as the 'law of the land.'" U. S. C. A. Const. Amend. 14. Where fundamental principles of liberty and justice have been disregarded in criminal trials in a State court, United States Supreme Court does not hesitate to exercise its jurisdiction to enforce guaranty of the Fourteenth Amendment. U. S. C. A. Const. Amend. 14."

5. Judge Patterson of the Pennsylvania Trial Court, was well aware of the murder the signs tell of. Petitioner and Mrs. Phillips went to said Judge's office to petition said Judge to order an inquest into said niece's death. They left the charts of injuries (as before your court, in petitioners petition for rehearing) in said Judge's office for several months, with the autopsy to back them; and other data on said niece's murder. A committee from the Blair County Ministerial Association petitioned Judge Patterson, of the Trial Court, to hold a Grand Jury Investigation into said niece's death. Judge Patterson is one of the officials the signs tell of R. p. 53-54. The Supplemental Decree shows the Judges

hands unclean and that Petitioners attorneys went in with their eyes open.

Is this the answer to so many unsolved murders in the State of Pennsylvania?

In *Jones v. Opelika*, 319 U. S. 105, p. 892. This court held: "The First Amendment reads as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. It is strenuously urged that the Constitution denies a city the right to control the expression of men's minds and the right of men to win others to their views. But the court is not divided on this proposition. No one disputes it. All members of the court are equally familiar with the history that led to the adoption of the Bill of Rights and are equally zealous to enforce the constitutional protection of the free play of the human spirit."

6. The record as before your court shows, the only question to be decided by these Pennsylvania Courts is the Constitutional question of Freedom of the Press. Must petitioner get a permit to hang cloth signs which were hung by Mrs. Phillips, on a house controlled by Mrs. Phillips. Said signs tell of the torture murder of petitioner's niece and the denial of a Coroners inquest. Said signs constitute a public petition to the Pennsylvania Officials to perform the mandatory duty of their office. Transcript of lettering on signs R. p. 53-54. Picture of signs R. p. 54A-54B.

In *Hill v. Smith*, 260 U. S. 592, 594. This court held: "A federal question which was treated as open, and decided, by the State Supreme Court, will be reviewed here without inquiring whether its federal character was adequately called to the attention of the trial State court. A question of burden of proof may amount to a federal question when intimately involved substantive rights under the federal statute."

In *Murdock v. Memphis*, 20 Wall 590, 22 L. Ed. 443. This court held: "But when it appears that

the federal question was decided erroneously against the plaintiff in error, we must reverse the case undoubtedly, if there are not other issues decided in it than that."

7. Petitioner claims her right to an impartial trial was violated. She claims this was done to suppress freedom of press in said authorities' effort to remove from the public eye the vehicle of information, R. p. 54A-54B, which tell of these Pennsylvania Officials refusal to perform the sworn ministerial duty of their office of not holding a Coroners inquest into the torture murder of her niece, R. p. 53-54. Petitioner claims this hearing was a gross fraud and repungnant to the Constitution.

In *Snowden v. Hughes*, 321 U. S. I. p. 400. This court held: "Section 43 provides that: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State * * * subjects, or causes to be subjected, any citizen of the United States or other person * * * to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law * * * for redress." Section 47 (3), so far as now relevant, gives an action for damages to any person" injured in his person or property, or deprived of having, and exercising any right or privilege of a citizen of the United States," by reason of a conspiracy of two or more persons entered into "for the purpose of depriving * * * any person * * * of the equal protection of the laws, or of equal privileges and immunities under the laws."

In *Tumey v. State of Ohio*, 273 U. S. 510 p. 441, 445. This court held: "But it certainly violates the Fourteenth Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case." "The plea was not guilty and he was convicted. No matter what the evidence was against him, he had the right to have an impartial judge."

8. The record as before your court shows: before this Pennsylvania Trial Court, Lieutenant of Police, Harry

Carey, read the police docket that he ordered petitioner's arrest on November 20, 1943, by order of Mayor Rhodes, R. p. 32. Lieutenant Carey is officer in charge from 4 p. m. until midnight. This arrest would have had to been the arrest at 10:20 p. m. November 20, 1943; the second arrest that day. This arrest does not show on the docket. See photostatic copy of docket on page 27 of this petition. The first arrest November 20, 1943, was at 1:30 p. m., by order of Lieutenant Meehan, officer in charge from 8 a. m. to 4 p. m. This is the only arrest showing on the docket for November 20, 1943. Docket shows this arrest is in full force and order against petitioner, copy of docket page 27. This docket does not show that petitioner was arrested twice on November 20, 1943; locked in jail ten hours and all property bail refused.

In *Sibbach v Wilson & Co., Inc.*, 312 U. S. 1, 655, p. 422. This court held: "The statute authorizing Supreme Court to prescribe civil procedure rules is restricted in its operation to matters of pleading and court practice and procedure. 28 U. S. C. A. Sec. 723b, 723c."

In *Hines v. Davidowitz*, 312 U. S. 52, p. 399. This court held: "The 'equal protection of the laws' is a pledge of the protection of equal laws."

In *Strauder v. West Virginia*, 100 U. S. 303, p. 307. This court held: "It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws."

9. Petitioner who aimed to obey the laws of God and man; who never drank intoxicating beverages, smoked cigarettes or frequented night clubs and no one can truthfully say aught against her reputation; was taken from a sick bed and locked in a common jail. This endangered her life, subjecting her to mental anguish of fear and despair, and created a jail record for her, impairing her health and damaging her reputation.

In *McNabb v. United States*, 318 U. S. 332, p. 614. This court held: "Experience has therefore coun-

seled that safeguards must be provided against the dangers of the overzealous as well as the despotic."

In *ex parte Quirin*, 317 U. S. I, p. 10. This court held: "Congress and the President, like the courts, possess no power not derived from the Constitution."

In *Garrett v. Moore-McCormack*, 317 U. S. 239, p. 251. This court held: "The constant objective of legislation and jurisprudence is to assure litigants full protection for all substantive rights intended to be afforded them by the jurisdiction in which the right itself originates."

10. The record as before your court shows petitioner's attorney Warfel refused to present her evidence that was proof positive she was not physically able to make or hang the signs, and was not in control of the house they hang on R. p. 42; contrary to petitioner's will he pleaded her guilty of not getting a permit for hanging the signs, R. p. 40. Petitioner arose several times and said to Judge Patterson; Your Honor: "I want on the stand to defend myself." The Judge said: "That is up to your attorney." Petitioner arose in court and demanded her Constitutional Rights to defend herself, and personally submitted this said evidence to the Judge; who examined and considered said evidence, R. p. 42; and the record shows he did not file said evidence as Exhibits, R. p. 32. Petitioner claims said action of her attorney constitute contempt of court, and malpractice; as this is abuse of the function of his office and obstructed the administration of justice.

In *Cook v. United States*, 267 U. S. 517, p. 395. This court held: "The power of contempt which a judge must have and exercise in protecting the due and orderly administration of justice, and in maintaining the authority and dignity of the court, is most important and indispensable."

In *Clark v. United States*, 289 U. S. I, p. 468. This court held: "We must give heed to all the circumstances, and of these not the least important is the relation to the court of the one charged as a contemnor. Deceit by an attorney may be punished as a contempt if the deceit is an abuse of the functions of his office."

In *Nye v. United States*, 313 U. S. 33, p. 810. This court held: "Under the statute providing that the

power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in the presence of the court, or so near thereto as to obstruct the administration of justice."

11. The record as before your court shows the only representative for the prosecution at Trial Court was the City Solicitor, Samuel Jubelirer, who was not present at the police court hearing, which is a court of no record. It shows he made false statements, which if true, would have been hearsay, R. p. 40, 42, 35.

In *Leadville Coal Company v. McCreery*, 141 U. S. 478, 479. This court held: "So as such affidavits rest on hearsay testimony, it is enough to say that they prove nothing."

12. Petitioner asserts that the prosecuting attorney, by false statements in his address, obstructed the administration of justice, and was so unfair as to deprive the trial of the essential quality of an impartial inquiry into her guilt. Petitioner claims said action, of said attorney, constitutes contempt of court.

In *Clark v. United States*, 289 U. S. I. p. 468. This court held: "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is * * the characteristic upon which the power to punish for contempt must rest."

In *Bridges v. State of California*, 314 U. S. 253 p. 195. This court held: "Congress proclaiming in statute expressly captioned "An Act declaratory of the law concerning contempts of court, "that the power of federal courts to inflict summary punishment for contempt" shall not be construed to extend to any cases except the misbehavior of * * * persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice."

13. This Pennsylvania Court was not a court of justice. It was a persecuted woman with the aid of her two sisters, trying to defend herself from a prejudiced Judge, City Solicitor, and the attorney she paid to defend her, whose actions were so unfair as to deprive the

trial of the essential quality of an impartial inquiry into her guilt. Judge Patterson was not interested if there had been a crime committed. His only concern was to get the signs down, R. p. 43. Could the reason be he was one of the Officials the signs tell of, R. p. 53. The City Solicitor's name appears on these signs, as taking two hundred and fifty dollars from petitioner, and never defended her, R. p. 54.

In *Powell v. State of Alabama*, 287 U. S. 45 p. 58. This court held: "However guilty defendants, upon due inquiry, might prove to have been, they were, until convicted, presumed to be innocent. It was the duty of the court having their cases in charge to see that they were denied no necessary incident of a fair trial," p. 61. "The question, however, which it is our duty, and within our power, to decide is whether the denial of the assistance of counsel contravenes the due process clause of the Fourteenth Amendment to the Federal Constitution. The words of Webster, so often quoted, that by "the law of the land" is intended "a law which hears before it condemns" have been repeated in varying forms of expression in a multitude of decisions."

In *Iowa-Des Moines National Bank v. Bennett*, 284 U. S. 239, p. 136. This court held: "When a state official, acting under color of State authority, invades, in the course of his duties, a private right secured by the Federal Constitution, that right is violated, even if the State officer not only exceeded his authority but disregarded special commands of the State law."

14. The record as before this court shows petitioner was arrested, convicted and fined seventy-five dollars, R. p. 4, on perjured evidence at Police Court hearing, R. p. 35. Rearrested on the same charges, taken from a sick bed and locked in a common jail for ten hours, and all property bail refused. R. p. 35. This subjected petitioner to double jeopardy.

In *Grafton v. United States*, 206 U. S. 333, p. 350. This court held: "If, therefore, a person be tried for an offense in a tribunal deriving its jurisdiction and authority from the United States and is acquitted or convicted he cannot again be tried for the same offense in another tribunal deriving its jurisdiction and authority from the United States, a different

interpretation finds no sanction in the article of war." Mr. Bishop, in his treatise on criminal law (7th Ed.) 1050, says: "It is not necessary to establish the defense 'autrefois acquit' or 'convict that the offense in each indictment should be the same in name. If the transaction is the same, or if each rests upon the same facts between the same parties it is sufficient to make good the defense.'"

In *Commonwealth v. Ruby*, 12 Pick 503, the court said: "Thus an acquittal on an indictment for murder will be a good bar to an indictment for manslaughter, and e converso, an acquittal on a indictment for manslaughter will be a bar to a prosecution for murder.

Petitioner therefore, upon the matters above stated, and the matters set forth in the annexed petition for a rehearing, respectfully pray this court to grant the petition for rehearing and to grant the application for a Writ of Certiorari.

Petitioner regrets the length of the motion for leave and of the second petition for rehearing. The great importance of the questions involved and the evidence of conspiracy to commit gross fraud to obstruct the process of Justice and make a mock of our Courts, make the Documents slightly longer than petitioner wished.

The petitioner herewith submits along with this motion for leave to file same a copy of the second petition for a rehearing, and have filed the originals of the same in this cause with the Clerk of the Court.

Respectfully submitted,

EDITH NYCUM, *Petitioner*,
1210 13th Avenue,
Altoona, Pennsylvania.

CERTIFICATE OF PETITIONER

Hereby certify that she means no disrespect to this Court nor any member thereof. She is sincere in the belief that a serious and grave error has been committed, and she further certify that in her opinion this second petition for rehearing is filed, not for delay but that Justice may be done.

EDYTH NYCUM, *Petitioner*.